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QUESTION OF THE VIOLATION OF HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS IN ANY PART OF THE WORLD, WITH PARTICULAR REFERENCE TO COLONIAL AND OTHER DEPENDENT COUNTRIES AND TERRITORIES

Written statement submitted by International Educational Development, Inc., a non-governmental organization on the Roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1296 (XLIV).

[7 April 1997]

Introduction

1. In Western countries there is growing intolerance toward refugees and immigrants. The United States of America is no exception to this trend. Within the last 12 months the United States has enacted two federal statutes which severely deprive refugees and immigrants of their civil, political, economic, social and cultural rights. The latest and most draconian of these statutes is the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (IIRIRA). In enacting these laws the United States has retreated from its traditional policy of protecting refugees and receiving immigrants and has reverted to isolationism, racism and xenophobia. This law is an assault on vulnerable refugees and immigrants around the world.

Expedited exclusion and removal of refugees without the right to a hearing

2. As of 1 April 1997, United States immigration officers can summarily exclude, without the right to a hearing, any refugee who seeks entry to the United States without documents or with documents that the officer determines to be false (IIRIRA, sect. 302). This provision jeopardizes the lives of

many refugees who may be forced to flee their home countries without first obtaining travel documents. Refugees seeking entry may only obtain a hearing by convincing an immigration officer that they have a "credible fear" of persecution (IIRIRA, sect. 302). Thus, under this legislation immigration officers have unfettered discretion to decide the fate of refugees. These provisions are particularly worrisome because of the potential abuse of authority by immigration officers who have a history of discrimination and brutality.

3. Worse still, a refugee will remain detained during the pendency of the asylum proceedings. By denying access to the courts, refugees fleeing persecution will find it more difficult to win their asylum claims. In addition, undocumented refugees discovered within the United States can be summarily removed to their home country without a hearing unless they can prove they entered legally or have resided for two years or more within the United States.

4. These provisions place refugees at serious risk of being returned to countries where they face threats to life and liberty and are in violation of international law. Because IIRIRA contains provisions denying the right to appeal in certain circumstances, a significant percentage of refugees are effectively denied the right to an effective remedy against abuse of their refugees rights.

Family separation

5. Under existing immigration law, spouses and children of legal residents are subject to a visa-quota system which limits the number of visas that can be issued to a particular country per year. Because of the high numbers of immigrants from Mexico, the Philippines and India, family members from these countries must wait four years or more to obtain a visa and be joined with their sponsoring relatives. As a result, family members often enter the United States illegally, desperate to be reunited with their legal resident spouse or parent.

6. As of 1 April 1997, many family members unlawfully residing in the United States are subject to expedited removal. After being ordered removed, the family member will also be barred from immigrating for five years. Any family member ordered removed more than once will be barred from immigrating for 20 years (IIRIRA, sect. 301). These provisions will effectively separate and destroy the family unit of many legal residents and their intending immigrant family members.

7. In addition, many family members who reside unlawfully in the United States for 180 days or more may be barred from immigrating for three years. Those who have resided unlawfully in the United States for a year or more and depart may be barred from immigrating for 10 years (IIRIRA, sect. 301). Again, these provisions will result in family separation for many intending immigrants.

8. Moreover, family members will be denied a visa unless they obtain an affidavit of support from a sponsor who can demonstrate an income level of 125 per cent above the federal poverty line (IIRIRA, sect. 551). This

provision discriminates against low-income legal residents who are able to support themselves and their families, but who do not earn a substantial income.

9. Legal residents are also subject to removal without any legal remedy if they have been convicted of certain crimes which are defined by the immigration law as crimes of moral turpitude or "aggravated felonies". Some of these crimes include receiving stolen property or smuggling a family member. For example, a legal resident who immigrated when he was an infant and has lived in the United States for over 35 years will be deported if he is convicted of attempting to smuggle his brother into the United States (IIRIRA, sect. 321). While the United States has always had a policy of removing legal residents who commit serious crimes, this law of "zero tolerance" will result in terrible hardships not just to the legal resident who is removed but to the United States citizen spouses, children and parents who will remain behind. This will result in permanent separation of families.

Conclusion

10. We appeal to the Commission, the United Nations High Commissioner for Refugees and other humanitarian organizations to condemn this trend of anti-refugee and anti-immigrant legislation in the United States and in other Western countries and to demand that the United States repeal offending sections of IIRIRA and related legislation that violates accepted international refugee standards.